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EDITORIALS.

THE BILL TO MAKE COMPENSATION TO PERSONS ERRONEOUSLY CONVICTED OF CRIME.

The state is apt to be indifferent and heartless when its own wrongdoings and blunders are to be redressed. The reason lies partly in the difficulties of providing proper machinery, and partly in the principle that individual sacrifices must often be borne for the public good. Nevertheless, one glaring instance of such heartlessness, not excusable on any grounds, is the state's failure to make compensation to those who have been erroneously condemned for crime.

There is plenty of analogy for such a measure. The Federal Court of Claims is a standing example of the general maxim that the state should fulfil its obligations and redress its wrongs by judicial inquiry and award. And a particular analogy here is found in the constitutional principle that compensation should be made for property taken for public purposes. To deprive a man of liberty, put him to heavy expense in defending himself and to cut off his power to earn a living, perhaps also to exact a money fine,—these are sacrifices which the state imposes on him for the public purpose of punishing crime. And when it is found that he incurred these sacrifices through no demerit of his own, that he was innocent, then should not the state at least compensate him, so far as money can do so?

Why has the principle never been here applied? Because we have persisted in the self-deceiving assumption that only guilty persons are convicted. We have been ashamed to put into our code of justice any law which *per se* admits that our justice may err. But let us be realists. Let us confess that of course it may and does err occasionally. And when the occasion is plainly seen, let us complete our justice by awarding compensation. This measure must appeal to all our instincts of manhood as the only honorable course, the least that we can do. To ignore such a claim is to make shameful an error which before was pardonable.

To disentangle the subject from prejudice, let us distinguish three different kinds of cases: (1) cases where an officer of justice is legally liable; (2) cases where the innocent man's sacrifice extends only up to his acquittal; (3) cases where it extends to and beyond his conviction.

(1). *Wrongs by officers* are now taken care of by the law. If the officer is insolvent, there is practically no redress, and the state might

COMPENSATION TO PERSONS ERRONEOUSLY CONVICTED

therefore be asked to compensate. We leave aside this question; it is for the far future.

(2). *Wrongs done by the state preceding an acquittal* include the loss of personal liberty, the loss of income, the loss of reputation and the expense, incurred by one who is later acquitted. Now it is clear that the state must arrest and try *all* duly accused persons, though it is certain that a large proportion will be found innocent. The innocent man has here made a sacrifice for the public good. There is no redress against the officers; they have faithfully kept to their duty under the law. The public good has gained quite as much as it would have done when commerce was served by a railroad placed on land taken by force from that same man. Why should not the sacrifice be compensated? In a civil case, at least costs are given against the unsuccessful litigant. Why should not the state allow costs against itself? Perhaps the amount of the expense bill would look too great. This may be a practical deterrent. But let us at least admit the principle and go on to the third class of cases.

(3). *Wrongs done by the state through erroneous conviction* are so much rarer than the preceding class that the expense of doing justice need here not be deterrent. And this wrong, when it does happen, is so much more grievous that it stands by itself in its appeal to our sense of injustice. Moreover, the moral effect of such an unredressed wrong is so bad that we can afford to make special effort to prevent it. A few cases of this kind stand in our annals as perpetual blood marks and do more to weaken the cause of law and order than a thousand unjust acquittals. The case of Lesurques, in France, just before the Revolution—a victim of mistaken identity—is chronicled in every book on circumstantial evidence. The case of Adolph Beck, in England only a few years ago, has done much to undermine the profound faith of the English people in their courts and their police. How much better if the law provided frankly beforehand for redress in such contingencies. Would not this at least restore our faith that justice would ultimately be done? In both those notable cases the government made a donation by way of expiation—in Beck's case, the sum of £5,000. But to leave such expiation to the whims or the sympathy of a busy political officer, and to the chances of persistent intrigues by the friends of the victim, is unworthy of an enlightened community. And in our own country it was left to the beneficence of a private citizen (Andrew Carnegie) to do something for Toth, the latest victim of justice's errors, who lay for twenty years in a Pennsylvania prison, convicted of a crime which he never committed.

TREATMENT OF THE DEGENERATE CRIMINAL

Why should we not provide for such grievous errors of justice? Almost every continental nation has done something substantial during the last hundred years to correct this defect in the law. Shall we lag behind any longer?

It is nobody's interest, apparently, to move for such a law. You and I have never suffered in that way; no large business interest is threatened; no class of persons directly feel a loss in their pockets; and so nobody exerts himself. Only the casual victims feel the wrong, and to expect them to unite in a demand for legislation is absurd.

Mr. Borchard's article in this number of the *JOURNAL* ought to appeal to every citizen of the land and particularly to every legislator. He sets forth what has been done on the continent and points out the entire feasibility of the measure. We ask for its earnest consideration.

Mr. Borchard has drafted a bill, which is printed in this issue at page 792 ff. It has already been introduced into Congress. By this bill the court of claims is given jurisdiction of such cases arising under Federal jurisdiction. The bill can be easily adopted for the same purpose in state courts for state cases. We trust that the movement for this amendment of our law will spread and that it will be taken up by the Institute of Criminal Law and Criminology.

J. H. WIGMORE.

THE TREATMENT OF THE DEGENERATE CRIMINAL.

A most important forward movement in Criminology waits upon a serious, concerted effort at the permanent segregation of dangerous degenerates.

In number 6, Volume II of this *JOURNAL*, at page 819, under the title "The Degenerate at Large," the writer called attention to a distressing murder that had been committed by an ex-convict who had previously served a number of terms in the penitentiary but without effect as far as checking a criminal career was concerned. He was apparently a hopeless degenerate. The point was urged in that place, as others have done time and again elsewhere, that every such character, regardless of his offense, should be permanently separated from normal society.

To this, no doubt, every man of sound common sense will give his assent. If Schrank, the would-be assassin of Mr. Roosevelt, is, as the experts declare, a chronic paranoiac, his being brought so expeditiously under a plan for permanently shutting him off from normal association with other men is a perfect illustration of the practical operation of one